

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION**

R.D.J. A MINOR, BY NEXT FRIEND
LUCIANA RACHELLE JACKSON
D.D.J., A MINOR, BY NEXT FRIEND
RANIKA LASHAWN JENKINS AND
CHRISTINE DIXON

Plaintiffs,

v.

CORRECTIONAL MEDICAL SERVICES,
INC., JOHN DOE, M.D., RICHARD ROE,
GARY GUARD, STEWART V. EPPS,
SAM SOE,

Defendants.

Case No. 2:11-CV- 04123-FJG

ORDER

Currently pending before the Court is defendant Corizon, Inc. f/k/a Correctional Medical Services, Inc.'s Motion for Judgment on the Pleadings (Doc. # 21) and plaintiffs' Motion for Leave to File a First Amended Complaint (Doc. # 28). Defendant Corizon moves for Judgment on the Pleadings because it states that plaintiffs have brought a wrongful death claim, a medical malpractice claim and a 42 U.S.C. § 1983 claim against Corizon and the State of Missouri defendants. Defendant argues that plaintiffs' claims should be dismissed because plaintiffs have made no factual allegations against Corizon, Inc. with the exception that Corizon is liable for the actions of two unidentified and unserved parties, Dr. John Doe and Richard Roe. Defendant states that respondeat superior cannot form the basis for liability under § 1983 and plaintiffs have failed to allege an unconstitutional policy or custom on behalf of Corizon, Inc.

In response, plaintiffs state that they "have properly stated a cause of action for state-based claim of Wrongful Death as against said Defendant and there is no requirement that Wrongful Death claims made in Missouri comply with federal rules

relating to Section 1983 claims or Eighth Amendment claims.” (Plaintiffs’ Suggestions in Opposition, p. 2). Plaintiffs also state that in order to prevail, they do not have to allege a § 1983 claim or an Eighth Amendment claim against defendant Corizon, Inc. in order to prevail. Plaintiffs have also file a Motion for Leave to File An Amended Complaint. They state that they do not contemplate adding parties, but believe that they may be able to identify some of the “John Doe” parties and also focus the issues related to causation.

After reviewing plaintiffs’ response to the Motion for Judgment on the Pleadings and Count III of the Petition, the Court is unclear whether plaintiffs are still asserting a § 1983 claim against defendant Corizon, Inc. In Count III of their Petition, plaintiffs stated that the claim was against “defendants in their official and individual capacities.” In light of the fact that the Court on July 28, 2011, granted plaintiffs’ Motion to Dismiss the State of Missouri, the Missouri Department of Corrections, Fulton Reception and Diagnostic Center and Larry Crawford, the Court will allow plaintiffs an opportunity to file an Amended Complaint which more clearly states which claims plaintiffs are asserting against which defendants. Plaintiffs shall file their Amended Complaint on or before **November 30, 2011**. Accordingly, defendant Corizon Inc.’s Motion for Judgment on the Pleadings is hereby **PROVISIONALLY DENIED** (Doc. # 21) and plaintiffs’ Motion for Leave to File an Amended Complaint is hereby **GRANTED** (Doc. # 28).

Date: November 17, 2011
Kansas City, Missouri

S/ FERNANDO J. GAITAN, JR.
Fernando J. Gaitan, Jr.
Chief United States District Judge